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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4963 OF 2005

Ramlakhan Harihar Singh ... Petitioner

Vs.

Jogasingh Sadhu Singh Bains ... Respondents

Mr. S.S. Swami for the petitioner.

Mr. S.P. Singh for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 13TH SEPTEMBER, 2005.

P.C.:-

1. The petitioner is the original plaintiff in S.C. Suit No.3384 of 2003 pending on the file of the City Civil Court at Bombay. The suit is filed against the respondent-defendant praying that the defendant or his agents, servants should be restrained from taking forcible possession of the suit business premises and demolishing the suit structure without following due process of law and for permanent order of injunction restraining the defendant from demolishing or taking forcible possession of the premises i.e. the structure admeasuring about 20 x 25' situated at Ashok Nagar, Waman Tukaram Patil Road, Near Raghunath Sathwadi, Opp. Mukhti Nagar, Govandi, Mumbai - 400 088.

2. In this suit, the plaintiff took out a chamber summons on 8/10/2004 praying that he may be permitted to

carry out amendment to the plaint. The trial court by the impugned order rejected the said application holding that after comparing the schedule of amendment with the plaint, it is found that altogether a new and different story has been put forth by the plaintiff in the form of an amendment. It is further held that in the form of an amendment, the complexion of the relationship between the plaintiff and the defendant has totally been changed.

3. I have heard, at considerable length, the learned counsel appearing for the parties. The learned counsel for the petitioner contended that the amendment is a pre-trial amendment and, in order to avoid multiplicity of proceedings, this amendment ought to have been allowed by the trial court. He submitted that by this amendment, only certain facts which were inadvertently not stated are sought to be added. The amendment does not change the texture of the suit nor does it change the relationship between the parties and, hence, the trial court erred in rejecting the chamber summons.

4. The learned counsel for the respondent, on the other hand, submitted that no interference is necessary with the impugned order as in fact what the plaintiff is attempting is to change the entire story. He now wants to contend that the defendant is a power of attorney holder of the original land owner which case was never stated by him in any of the pending proceedings.

5. Having heard the learned counsel for the parties, I am of the opinion that the learned judge is right only to the extent that certain portions of the amendment would certainly result in changing the complexion of the relationship between the plaintiff and the defendant. It is pertinent to note that L.C. Suit No.4176 of 2003, which was filed by the plaintiff was withdrawn by him. In that suit, the plaintiff has never described the defendant as a power of attorney holder of the original land owner. It was his contention that notices were issued in the name of the defendant. However, the premises were in his possession. In L.C. Suit No.2920 of 2004 filed by the plaintiff, which is pending, this case is not pleaded. In the present suit, the plaintiff has merely stated that the defendant is his neighbour at the business address. If at all the defendant is the power of attorney holder of the land owner and was collecting the rent on his behalf, it was a vital fact which ought to have been mentioned in either of the plaints in the suits filed by the plaintiff. It is, therefore, obvious as held by the trial court, that the complexion of the relationship is sought to be changed. Such amendment cannot be allowed. Therefore, paragraphs 2A to 2F cannot be introduced by way of amendment.

6. However, paragraphs 16A to 16N are merely additional facts. These paragraphs mostly refer to the pending litigations. In the prayer clause, the defendant is seeking restoration of possession. In my opinion, this

being a pre-trial amendment, this amendment needs to be allowed. However, since the suit is filed on 17/7/2003 and the chamber summons is moved in October ,2004, the plaintiff must be saddled with costs.

7. I have already noted that another suit in respect of the same property being L.C. Suit No.2920 of 2004 is pending. This suit is filed against the Corporation and the defendant is impleaded as party defendant in that suit. In that suit, it is prayed that the demolished suit property be reconstructed. The learned counsel urged that because certain events have inadvertently not been mentioned either in S.C. Suit No.2920 of 2004 or in S.C. Suit No.3384 of 2003, the plaintiff has to either amend S.C. Suit No.2920 of 2004 or S.C. Suit No.3384 of 2003 and he has chosen to amend S.C. Suit No.3384 of 2003. If both suits involve same property, it would be proper if the City Civil Court at Bombay hears and disposes of both the suits together. The learned counsel for the petitioner states that he will make an application to that effect to the Principal Judge, City Civil Court at Bombay. If such an application is made, the Principal Judge, City Civil Court at Bombay shall consider it in the light of my above observations.

Hence, the following order.

O R D E R

(a) Paragraphs 2A to 2F in the Schedule of

proposed amendment cannot be introduced by way of amendment. However, the petitioner is permitted to add paragraphs 16A to 16N and prayer clause cc and cc1. This will be, however, subject to the petitioner paying costs quantified at Rs.7000/- to the defendant. The payment of costs will be condition precedent to the amendment of the plaint. The costs will be paid within a period of three weeks from today. Amendment to be carried out within a period of three weeks after the payment of costs. Needless to say that after the amendment is carried out, the respondent will be at liberty to file additional written statement.

(b) Writ petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)